IN THE MICHIGAN SUPREME COURT

Appeal from the Michigan Court of Appeals
Case No. 216025
Before: McDonald, P.J., and Neff and Fitzgerald, JJ.

NICKOLAS REDNOUR,
Plaintiff/Appellee,

Supreme Court No.: 119187

-vs-

HASTINGS MUTUAL INSURANCE COMPANY,
Defendant/Appellant.

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BRIEF ON APPEAL OF PLAINTIFF/APPELLEE NICKOLAS REDNOUR

ORAL ARGUMENT REQUESTED

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STATEMENT OF BASIS OF JURISDICTION

The jurisdictional summary stated in the Defendant/Appellant's Brief is complete and accurate.

STATEMENT REGARDING STANDARD OF REVIEW

The standard of review contained in the Defendant/Appellant's Brief is complete and accurate.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

I.

DID THE COURT OF APPEALS CORRECTLY DETERMINE THAT THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN THE TRIAL COURT GRANTED THE DEFENDANT'S MOTION FOR SUMMARY DISPOSITION FINDING AS A MATTER OF LAW THAT THE PLAINTIFF, A MICHIGAN RESIDENT, WAS NOT ENTITLED TO NO-FAULT PERSONAL INJURY PROTECTION BENEFITS IN AN OUT-OF-STATE MOTOR VEHICLE ACCIDENT WHERE THE INSURANCE POLICY LANGUAGE DEFINED OCCUPYING MORE BROADLY THAN MCLA 500.3111 AND ENTITLED THE PLAINTIFF TO NO-FAULT BENEFITS UNDER THE LANGUAGE OF THE POLICY?

The Plaintiff/Appellee contends the answer should be: "Yes"

The Defendant/Appellant contends the answer should be: "No"

The Trial Court answered: "No"

The Michigan Court of Appeals answered: "Yes"

A. Is the Court of Appeals decision in *Rohlman* (on remand) consistent with the *Rednour* decision?

The Plaintiff/Appellee contends the answer should be: "Yes"

The Defendant/Appellant contends the answer should be: "No"

The Trial Court answered: "No"

The Michigan Court of Appeals answered: "Yes"

B. Is the Court of Appeals decision in *Rednour* consistent with the plain and commonly understood meaning of "occupying" as defined in the insurance policy and would a contrary decision would defeat the reasonable expectations of an insured?

The Plaintiff/Appellee contends the answer should be: "Yes"

The Defendant/Appellant contends the answer should be: "No"

The Trial Court did not address this issue.

The Michigan Court of Appeals would answer: "Yes"

INTRODUCTION

This is a breach of contract case involving a motor vehicle accident which occurred in Ohio. The dispositive issue concerns whether an insurance company can be held liable for paying personal injury protection benefits where the policy of insurance provides broader coverage than the compulsory Michigan No-Fault Statute. Under the policy definition, it was not necessary for the insured to be physically inside the covered vehicle in order to obtain no-fault benefits in an out of state accident. The policy defined occupying as "in, upon, getting in, or, out or off". The insured sustained injuries when he was pinned up against the covered vehicle. In finding coverage under the policy language, the Court of Appeals in Rednour v Hastings Mutual Insurance Company, 245 Mich App 419 (2001), affirmed the legal principle in insurance law that an insurance policy can provide broader coverage than a compulsory insurance statute.

As the Court of Appeals correctly pointed out, the Michigan insurance code is not a statement of limitation and should not limit an insurance company's obligation under a policy of insurance drafted by the insurance company. This would provide a unfair windfall to an insurance company. If the Defendant wished to sell a policy of insurance that defined occupying as being physically inside the vehicle, the Defendant should have written the policy in that manner. The Defendant could avoid future liability in this type of case by re-writing their policy of insurance to exclude coverage in situations in out-of-state accidents unless the insured is actually physically inside the car. Instead, the Defendant sold a policy with broader coverage than the No-Fault Statute. The Court of Appeals decision was not erroneous under the facts of this case.

The Defendant misapplies this Court's decision in Rohlman v Hawkeye-Security Ins. Co., 442 Mich 520, 530, 502 NW2d 310 (1993). In Rohlman, this Court was interpreting the No-Fault Statute and was not addressing the issue of whether or not a policy of insurance could provide broader coverage than the No-Fault Act. This Court in Rohlman specifically stated that the Court was not addressing that issue and indicated that a policy of insurance could provide broader coverage than required by the No-Fault Act. Ibid, Rohlman at p. 530, footnote 10.

Mr. Nickolas Rednour was severely injured by a drunk driver. He has waited more than six years to obtain the benefits that he was entitled to under the policy of insurance. The Plaintiff/Appellee would respectfully request that this Honorable Court affirm the decision of the Court of Appeals so that Mr. Rednour can obtain no-fault benefits for which he was justly entitled under the applicable insurance policy.

COUNTER-STATEMENT OF FACTS

This is a first party no fault lawsuit arising out of a motor vehicle accident which occurred on February 2, 1997. See Amended Complaint, Appellant's Apx. at p. 41A. The subject accident occurred on IS-280 in the State of Ohio. Ibid, para. 6-8. The Plaintiff Nickolas Rednour was operating a 1991 Pontiac Grand Am that was owned by William Tarchalski and insured with Hastings Mutual Insurance Company policy number APV-908-61-02. Apx.at pp. 9A-13A. The Plaintiff and Mr. Tarchalski were both residents of the State of Michigan at the time of this accident. See Exhibit A of Plaintiff's response to motion for summary disposition, pp. 1-3.

As Mr. Rednour was driving the subject vehicle, he had to stop the vehicle on the shoulder of southbound IS-280 because of a left rear flat tire. Apx. at pp. 36A. - 38A. Mr. Rednour was changing the tire on the subject vehicle when he was struck by a drunk driver and pinned up against the disabled vehicle. Apx. at p. 36A. Mr. Rednour's statement to the state highway patrol was as follows:

> "We were southbound on IS-280, the left rear tire went flat. I pulled over the car after the bridge because that was the only shoulder I could find. Me and Bill got out to get stuff out to change the tire. I bent down and broke the lug nuts free and I stood up. I started to walk towards the back of the car when I saw the vehicle. I saw him come over the top of the hill and I saw him swerve towards the box. It was like he aimed his headlights at the car. I know he saw us because he did not hit the box. That's when I was hit. When I saw him coming I tried to turn away from him **but I was pinned up against the car.**"
>
> (Ibid, see p. 36A. - Emphasis supplied)

* * *

As a result of this incident, Mr. Rednour suffered severe orthopedic injuries to his lower extremities. See Amended Complaint, paragraph 8, Apx. at p. 42A. Mr. Rednour made a claim for personal injury protection benefits with Hastings. Ibid, p.41A. Hastings denied the claim. Ibid, 4A.

The Plaintiff filed the instant lawsuit on February 26, 1998. Ibid, Apx.at p. 39A. The Defendant filed a motion for summary disposition on September 25, 1998. Ibid, Apx. at p. 4A. The Defendant argued that the Plaintiff's cause of action was barred by MCLA 500.3111 since the Plaintiff was not physically inside the vehicle when the motor vehicle accident occurred. See Defendant's motion for summary disposition. Ibid, Apx., p. 5A. The Plaintiff filed a response brief and a cross motion for summary disposition on October 2, 1998. Apx. at p. 5A.

The Plaintiff argued that the insurance policy provided broader coverage in out of state accidents than the relevant statute MCLA 500.3111. Apx. at p. 58A. The policy defined occupying as follows: "In, upon, getting in, on, out or off." Apx. at p. 23A.

The trial judge granted the Defendant Hastings' motion and denied the Plaintiff's cross-motion on October 7, 1998. Apx. at pp. 59A.-60A. - motion for summary disposition hearing on October 7, 1998. The trial court ruled in the pertinent part as follows:

> "THE COURT: In any event, I would agree that the policy itself - - I agree with Plaintiff that the policy itself can be broader than the statute. I don't think there's any doubt about that. That's what - - the Rolman case doesn't say that, but it implies that because it says that the - - that the statute outlines a minimum standard which must be observed.
>
> It certainly doesn't - - it doesn't mean that there can't be a broader standard, okay. I think that would be true, and there is a broader standard in this policy isn't there. If an accident happened in Michigan, there is a broader standard. He can - - he doesn't even have to be occupying the vehicle. However, the way I read the exclusion, Section A-3 under Exclusions, Section A says:
>
> > 'We don't provide PIP benefits for bodily injury sustained by an insured while not occupying an auto if the accident takes place outside Michigan.'
>
> And then counsel is suggesting that because this guy was somewhere near the auto and whoever hit him knocked into the auto that that should come under the section that says upon, I disagree. I mean he was outside the auto. I think he should be able to get PIP benefits, but I don't think he can under this particular policy, and I will - - I will grant summary disposition as to defendant's request."
>
> (Emphasis supplied)

* * *

The Plaintiff filed a motion for reconsideration on November 2, 1998. Apx. at p. 5A. The trial court denied the motion in a written opinion dated November 18, 1998. Apx. at p. 65A. The Plaintiff filed a timely claim of appeal on December 2, 1998. Apx. at p. 6A.

The Plaintiff filed an appeal of right in the Michigan Court of Appeals from the order granting Defendant's motion for summary disposition entered on October 22, 1998. Ibid. The Court of Appeals granted the Plaintiff's relief requested and issued an order reversing the decision of the trial judge. Apx. at, p. 70A. Rednour v Hastings Mutual Insurance Company, 245 Mich App 419 (2001). The Court of Appeals stated in the pertinent part as follows:

> "Under the express terms of the insurance policy, plaintiff is excluded from PIP benefits for the Ohio accident only if he was not 'occupying' the vehicle, defined as 'in, upon, getting in, out or off'[7] the vehicle, at the time he sustained injury. The words 'in, upon, getting in, on, out, or off' are subject to interpretation. See *e.g., Rohlman II, supra* at 354-357 (interpreting the parties' intent with respect to the word 'upon').
>
> We cannot conclude that the parties to the insurance agreement at issue intended that the broad definition of 'occupying' used in the policy would exclude the circumstances of plaintiff's injury in this case. Plaintiff sustained injuries as the driver of a temporarily disabled automobile, upon exiting the car and proceeding to repair a flat tire. The parties could not have intended that the driver of an automobile would be covered for PIP benefits if struck by a vehicle as he was stepping out of the vehicle's doorway, but not if struck the moment his body had moved from the door threshold to the vehicle's tire. Plaintiff was within six inches of the vehicle, still in sufficient contact with the vehicle to be pinned against it upon impact and surely within the context of 'in, upon, getting in, on, out or off' the vehicle, having been in physical contact with the vehicle upon impact. See *id.* at 357-358 (the term 'upon' requires at a minimum some physical contact with the covered auto, but not that a 'person be positioned so that [he] is totally and completely in contact with or supported by the underlying object').
>
> Even were we to find the interpretation of the policy language debatable, we are compelled to our determination by the well-embedded rule to strictly construe ambiguous policy language against the insurer. *Royal Globe, supra* at 573; *Nickerson v Citizens Mutual Ins Co*, 393 Mich 324, 330, 224 NW2d 896 (1975). We therefore conclude that the provisions of the insurance policy govern plaintiff's entitlement to PIP benefits and do not preclude coverage in this case for plaintiff's injuries."
>
> (Apx.at p. 70A)

* * *

The Defendant/Appellant filed a timely application for leave to appeal which this Honorable Court granted on September 17, 2002. Apx. at p. 71A.

ARGUMENT

I.

THE COURT OF APPEALS CORRECTLY DETERMINED THAT THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN THE TRIAL COURT GRANTED THE DEFENDANT'S MOTION FOR SUMMARY DISPOSITION FINDING AS A MATTER OF LAW THAT THE PLAINTIFF, A MICHIGAN RESIDENT, WAS NOT ENTITLED TO NO-FAULT PERSONAL INJURY PROTECTION BENEFITS IN AN OUT-OF-STATE MOTOR VEHICLE ACCIDENT WHERE THE INSURANCE POLICY LANGUAGE DEFINED OCCUPYING MORE BROADLY THAN MCLA 500.3111 AND ENTITLED THE PLAINTIFF TO NO-FAULT BENEFITS UNDER THE LANGUAGE OF THE POLICY.

This is a breach of contract case. This case is governed by the applicable Hastings no-fault policy of insurance. The policy states that an insured is entitled to personal injury protection benefits if the injured person is involved in a motor vehicle accident. The policy defines insured as follows:

> "C. 'Insured' as used in this endorsement means:
>
> 1. Your or any 'family member' injured in an auto accident;
> 2. Anyone else injured in an 'auto accident';
>
> **a. While 'occupying' 'you're a.'; or**
> **b. If the accident involves any other 'auto';**
>
> (1) Which is operated by you or any 'family member'; and
> (2) To Which Part A of this policy applies.
>
> **c. While not 'occupying' any 'auto' if the accident involves 'your A.'."**
>
> (Emphasis supplied)

* * *

Under the applicable policy of insurance, the Plaintiff would be defined as an insured entitled to no fault benefits under section 2a or 2c. It is undisputed that the "covered auto" was involved in an automobile accident and that the Plaintiff would be considered an insured as defined by the policy.[1] The trial court held that the applicable policy of insurance provided broader coverage for no fault benefits than the relevant statute MCLA 500.3111. However, the trial court held as a matter of law that the instant cause of action was barred by the policy exclusion concerning accidents occurring outside of Michigan. The exclusion states:

> "3. Sustained by any 'insured' while not 'occupying' an 'auto' if the accident takes place outside Michigan. However, this exclusion (A3) does not apply to:
>
> a. You; or
> b. Any 'family member'."
>
> (Emphasis supplied)
>
> * * *

It is the position of the Plaintiff that the exclusion did not apply since Mr. Rednour satisfied the definition of "occupying" as defined in the policy of insurance. The policy of insurance defined "occupying" as follows:

> "G. 'Occupying' means in, upon, getting in, on, out or off."
>
> * * *

The dispositive issue for review purposes is whether the Plaintiff would fall within the policy definition of "occupying" under the facts of this case.

---

[1] The policy definition of occupying is not relevant to the question of whether the Plaintiff is an insured since section 2C simply requires that the accident involves the covered auto.

This Court addressed the contract interpretation of the term "occupying" in Nickerson v Citizens Mutual Insurance Company, 393 Mich 324, 224 NW2d 896 (1975). In Nickerson, the court held that a no-fault claimant would be an "occupant" of a vehicle under such a policy definition. In Nickerson, the Plaintiff's vehicle stalled and in the course of getting assistance, the Plaintiff got out of the vehicle, walked around to the front of the car and was struck from behind. The Nickerson Plaintiff was not inside of the vehicle at the time of the subject accident. In Nickerson, the applicable policy of insurance defined "occupying" as follows:

> "In or upon or entering into or alighting from."
>
> (Emphasis supplied)

* * *

The definition of "occupying" in Nickerson and the instant case do not have a relevant distinction. After looking to other jurisdictions for guidance, the Nickerson Court held that the Plaintiff was an "occupant" under the definition contained within the policy of insurance holding as follows:

> "We hold that the Plaintiff in the instant case was covered under the language above due to (1) his immediate prior 'occupying' of the insured vehicle and (2) his suffering of an injury arising out of the use or repair of the same automobile."
>
> (See Nickerson at p. 326)

* * *

This Honorable Court in justifying its decision stated as follows:

> "In this vein, we should also parenthetically bear in mind, as Judge McGregor pointed out in his Court of Appeals opinion, that unquestionably 'appellee was in contact with the automobile at the time of his injury.' 52 Mich App 40, 48. Certainly it cannot be disputed that without 'physical contact' in this case, there would have been no injury. Hence, a strictly literal reading of the policy

> language also favors Plaintiff in this case. Who can doubt that Plaintiff was 'upon' the car when injured?
>
> In sum, the approach to interpretation of this policy language which does not hold 'physical contact' mandatory, appears to us to be by far the more reasonable and persuasive approach. It accords with a strict reading of the policy language, it well implements the time-honors policy of construction of policy language against the insurer, and, perhaps most significantly, as Judge McGregor and Plaintiff point out, it guards against recovery based entirely 'fortuitous circumstance."
>
> (Emphasis supplied)

* * *

Although the Nickerson precedent involves a pre no-fault case, this distinction is not relevant to the question of whether the Plaintiff is entitled to benefits under the insurance policy language.[2] The definition of 'occupying' as set forth in the Defendant's policy of insurance is the only relevant inquiry as to the instant issue. The policy language does not require that a party be physically inside a vehicle in order to be occupying the vehicle. If the Defendant wished to define 'occupying' as meaning physically inside the vehicle, then the Defendant insurance company should have defined it in that way instead of, "**upon, getting in, on, out or off.**" The Oxford English Dictionary defines "upon" as follows:

> "Of local position outside of, but in contact with or close to, a surface."

* * *

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[2] Application of MCLA 500.311 is not relevant to this inquiry since the policy provided broader coverage than the statute in out of state accidents. Contrary to this, the Defendant wants to limit and re-write the insurance policy to exclude coverage based on MCLA 500.3111. The insurance contract makes no mention of the statute nor mentions that coverage may be limited by the No-Fault Statute.

As stated in Nickerson, the Plaintiff was "upon" the vehicle when injured. The Plaintiff was "on" the vehicle when injured and certainly "out" of the vehicle. Mr. Rednour's injuries occurred when he was "pinned up against the car." The Plaintiff was as a matter of law occupying the vehicle under the policy definition of occupying.

The Defendant cites this Court's decision in Rohlman v Hawkeye-Security Ins., 442 Mich 520 (1993) for the proposition that the Plaintiff was not entitled to no fault benefits. The Rohlman Court held that a Plaintiff was not entitled to no fault benefits since the claimant was not an occupant of the motor vehicle as defined under MCLA 500.3111. However, the insurance policy language in the instant case is broader than the statute. The Rohlman precedent when understood supports Plaintiff's argument. The Rohlman court indicated that a policy with broader language than the statute may result in coverage. The court stated in the interpretive footnote 10 at page 553 as follows:

> "In this case, as in *Royal Globe*, we have a situation in which the policy language provides a definition of occupant different from, and possibly broader than, the no-fault act. However, the issue was not argued by the litigants in *Royal Globe*, nor has it been presented by the parties in this case. In arguing that the policy definition of occupying controls, the Plaintiff merely asks us to limit our *Royal Globe* decisions to priority disputes between insurance companies and to apply *Nickerson* in those fact-sensitive cases where the Plaintiff otherwise would not be entitled to a recovery as proposed by the dissenting opinion.
>
> We emphasize that under the facts of this case and according to the arguments presented by the parties, the statute controls, and we do not deal with the question whether the policy can and, if so, did provide coverage broader than that required by the no-fault act. Although we reserve the issue for a case in which the issue is properly before us, we note the following from Couch, n 3 *supra*, §45:697, p 344.

A compulsory insurance statute in effect declares a minimum standard which must be observed, and a policy cannot be written with a more restrictive coverage.

The statute is manifestly superior to and controls the policy, and its provisions supersede any conflicting provisions of the policy.

However,

[a]lthough an insurer may not by its contract restrict its coverage to less than that required by statute, it may contract for a broader coverage than the statutory liability, as, for instance, with respect to territory, amount, circumstances of operation, etc., and in such case recovery is measured solely by the policy. The fact that the coverage of the policy may be broader than that required by statute is immaterial, for the contract of the parties may be enforced as written. [*id.*, § 45:699, p 336.]"

(Rohlman, supra at 530, 531, N. 10 - Emphasis supplied]

* * *

The trial judge recognized that the policy language was broader than MCLA 500.3111. However, the trial judge failed to find coverage even where the broader policy language did not exclude coverage for benefits. The trial judge mistakenly ruled as a matter of law that the Plaintiff was not occupying of the vehicle. The trial court failed to apply the policy definition of occupying when deciding this issue.

The Court of Appeals recognized that the lower court holding was contrary to the Rohlman precedent and is not consistent with the common law rules of contract interpretation. An insurer may not escape liability by taking advantage of an ambiguity and if there are two constructions that can be placed upon the policy, the construction most favorable to the insured will be adopted. See Powers v DAIIE, 427 Mich 602, 623, 398 NW2d 411 (1986). Further, an insurer may not escape liability by taking advantage of a forced

construction of the language in a policy. Ibid at page 624. The policy of insurance in the instant case provided coverage broader than required under the No Fault Act. The No Fault Act only provides a minimum standard which must be complied with and the Hastings policy provided for broader coverage than the statute.

In the instant case, careful review of the contract language clearly provides that Mr. Rednour is entitled to no fault benefits. In his own words, Mr. Rednour stated that he was "pinned up against the car." Therefore, the Plaintiff would respectfully request that this Honorable Court affirm the decision of the Michigan Court of Appeals.

A. The Court of Appeals Decision in *Rohlman* is Consistent with the *Rednour Decision*.

The Court of Appeals decision in Rohlman v Hawkeye-Security Insurance Company, on remand, 207 Mich App 344, 526 NW2d 183 (1994) involved interpretation of the same contractual language contained in Rednour and is consistent with the Rednour decision. In Rohlman, the plaintiff/insured had been a passenger in a minivan which was involved in a motor vehicle accident in Ohio while pulling a two-wheel trailer. The trailer became disconnected from the van and overturned. The insured sustained injury when after getting out of the van and walking ten to twenty feet back to the trailer, he attempted to put the trailer back on it's wheels when he was struck by an unidentified vehicle. With respect to determining whether or not the insured was entitled to uninsured motorist benefits based on an analysis of the contractual language, the Rohlman court remanded the matter to the trial

court for further proceeding because of a factual discrepancy.[3]

The Court of Appeals decision in Rohlman is certainly consistent with coverage in this matter. The Rohlman, supra. court stated as follows:

> "We doubt that anyone would argue that the parties to the insurance contact intended that the word 'upon' be used in the sense of 'approximate contact . . . with an attacker' or in 'in close proximity . . . with an attack.' Moreover, we are convinced that the parties did not intend that 'upon' should be interpreted as 'immediate proximity.' That interpretation would provide (and require payment for) supplemental coverage in the form of uninsured motorist benefits for anyone who happens to be near the covered auto. and injured when the auto is struck by an uninsured motorist even though the person has no connection with the owner, named insured, or covered vehicle.
>
> However, we are not persuaded that the term 'on' or 'upon' requires that an object or person be positioned so that the object or person is totally and completely in contact with or supported by the underlying object or person. For example, we might say that the child was 'on' his scooter, understanding that one foot was pushing on the ground, or that a secretary is working 'on' a computer, or is 'on' the telephone, although the secretary's body is not totally in contact with either instrument. **We conclude, then, that the term 'upon' in the definition of 'occupying' means, that at a minimum, some physical contact with the covered auto. A person seeking uninsured motorist benefits by claiming to be 'upon' a covered auto must show that there was physical contact between the person and the covered auto when the injury occurred**. *Auto-Owners Ins Co, supra.*"
>
> (Emphasis supplied)

* * *

The Court of Appeals final conclusion when interpreting the policy language was that the term "upon" and the definition of occupying required some physical contact with the covered auto. Clearly, Mr. Rednour would qualify for benefits under this analysis. Mr. Rednour's lower

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[3]The court dismissed the claim for PIP benefits since the No-Fault Statute defined occupying as being physically inside the car. The issue concerning whether the policy had broader coverage was not addressed.

extremity fractures were caused when the drunk driver's vehicle struck him while standing up from changing a tire and being pinned up into the covered vehicle. Mr. Rednour's injuries suffered in this motor vehicle accident were caused by physical contact with the covered vehicle as he was pinned upon the vehicle. He had the requisite minimum physical contact with the covered auto and his injuries, which are the subject of this lawsuit, were caused by physical contact with the covered auto.

The Defendant/Appellant's analysis of Rohlman on remand in the Court of Appeals is misplaced. The Rohlman Court stated that there must be some type of physical contact between the person and the covered auto when the injury occurred which is exactly what happened to Mr. Rednour when he was "pinned up against" the covered auto and his injuries occurred. See also Gentry v Allstate Ins., 208 Mich App 109, 527 NW2d 39 (1994) where the Court of Appeals found coverage where a Plaintiff was physically outside the covered vehicle and sustained injuries when the covered auto fell on top of the Plaintiff.

B. The Court of Appeals Decision in *Rednour* Is Consistent With the Plain and Commonly Understood Meaning of "Occupying" as Defined in the Insurance Policy and a Contrary Decision Would Defeat the Reasonable Expectations of an Insured.

The Defendant's interpretation of "occupying" as defined in the policy would defeat the reasonable expectations of an insured. The Court of Appeals in Marlo Beauty Supply, Inc. v Farmers Insurance Group of Companies, 227 Mich App 309, 575 NW2d, 324 (1998), lv den 459 Mich 954 (1999), explained the rule of reasonable expectations as follows:

> "Under the rule of reasonable expectations, a court finds coverage under a policy if 'the policy holder, upon reading the contract language is led to a reasonable expectation of coverage.' *Fire Ins Exchange v Diehl*, 450 Mich 678,

687, 545 NW2d 602 (1996). In considering the reasonable expectations of the insured, a court must look at the policy language from an objective standpoint and determine whether an insured could have reasonably expected coverage. *Allstate Ins Co v Keillor (After Remand),* 450 Mich 412, 417, 537 NW2d 589 (1995)."

* * *

The Court's duty is to ascertain the meaning which the insured would reasonably expect. See Farm Bureau Mutual Insurance Company v Blood, 230 Mich App 58, 583 NW2d 476 (1998). See also Smillie v Travelers Insurance Company, 102 Mich App 780, 302 NW2d 258 (1980). In considering the reasonable expectations of the insured, the Court should look at the policy language from an objective standpoint and determine whether an insured could have reasonably expected coverage. Ibid, Marlo Beauty Supply at p. 309. Professor Keaton explained the legal doctrine as follows:

> "The objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations."
>
> (See Keaton, insurance law, section 6.3(a) p. 351)

* * *

The doctrine of reasonable expectations was first recognized by the Michigan Supreme Court in Zurich Insurance Company v Rombough, 384 Mich 228, 232-233, 180 NW2d 775 (1970) when the Court adopted the following reasoning from Gray v Zurich Insurance Company, 65 Cal 2d 263, 419 P2d 168 (1966):

> "In interpreting an insurance policy we apply the general principle that doubts as to meaning must be resolved against the insurer and that any exception to the performance of the basic underlying obligation must be so stated as clearly to apprise the insured of its effect.

> These principles of interpretation of insurance contracts have found new and vivid restatement in the doctrine of the adhesion contract. As this Court has held, a contract entered into between two parties of unequal bargaining strength, expressed in the language of a standardized contract, written by the more powerful bargainer to meet its own needs, and offered to the weaker party on a 'take it or leave it basis' carriers some consequences that extend beyond orthodox implications. Obligations arising from such a contract inure not alone from the consensual transaction but from the relationship of the parties.
>
> **Although courts have long followed the basic perception that they would look to the words of the contract to find the meaning which the parties expected from them, they have also applied the doctrine of the adhesion contract to insurance policies, holding that in view of the disparate bargaining status of the parties we must ascertain that meaning of the contract which the insured would reasonably expect."**
>
> (Zurich at p. 232-233 - Emphasis supplied)

* * *

The definition of "occupying" in the policy is ambiguous and a reasonable insured would expect coverage under the facts of this case. Insurance policies should be liberally construed in favor of the policy holder. See Frankenmuth Mutual Insurance Company v Masters, 460 Mich 105, 595 NW2d 832 (1999). Clauses in the insurance instrument favoring the insured should dominate those which are for the benefit of the insurer. Brogdon v American Auto Ins. Co., 290 Mich 130, 287 NW2d 406 (1939). Any ambiguity in the contract should be construed against the drafter. Ibid.

CONCLUSION AND RELIEF REQUESTED

The Plaintiff/Appellee would respectfully request that this Honorable Court affirm the decision of the Appellate Court. The Court of Appeals decision affirmed the black letter insurance principle holding that an insurance company can sell an insurance policy that provides broader coverage than required under a compulsory insurance statute which sets forth minimum standards of coverage. The Michigan Court of Appeals opinion simply affirmed that well-recognized legal principle.

WHEREFORE, the Plaintiff/Appellee would respectfully request that this Honorable Court affirm the decision of the Court of Appeals.

Respectfully submitted:

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Dated: December 11, 2002

PROOF OF SERVICE

STATE OF MICHIGAN)
)ss.
COUNTY OF WASHTENAW)

Christa M. Rodriguez, being duly sworn, deposes and says that she is not a party to the above described litigation, that she enclosed in an envelope two (2) copies of:

BRIEF ON APPEAL OF PLAINTIFF/APPELLEE NICKOLAS REDNOUR / ORAL ARGUMENT REQUESTED

sealed the envelope to: Thomas G. Van Belkum
Keith P. Felty
SMALL, TOTH, BALDRIDGE & VAN BELKUM, P.C.
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J. Mark Cooney
COLLINS, EINHORN, FARRELL & ULANOFF, P.C.
4000 Town Center, Suite 909
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and that she deposited the envelope in a government mail receptacle located in Ann Arbor, Michigan on December 11, 2002.

Affiant further states that she placed such amount of postage on the envelope as is required by postal regulations to permit first class postage.

Affiant further states that the following return address was on the envelope: LOGEMAN, IAFRATE, JANUSZEWSKI & POLLARD, P.C., 2950 South State Street, Suite 400, Ann Arbor, Michigan 48104.

Christa M. Rodriguez

Subscribed and sworn to before me on December 11, 2002.

Cynthia M. Rubio, Notary Public
Wayne County acting in
Washtenaw County, Michigan
My commission exp: 02/10/04